

## REMARKS

Claims 1-26, 33-40 and 61-73 are pending.

By this Office Action, the Examiner has required restriction to one of the following inventions under 35 U.S.C. §121:

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| Group I.   | Claims 1-6, drawn to a method for identifying a presence of a translocation promoting agent, classified in class 435, subclass 3.                            |
| Group II.  | Claims 7-9, drawn to a method for identifying viral envelope glycoprotein binding to a translocating promoter agent, classified in class 435, subclass 7.93. |
| Group III. | Claims 10, drawn to an assay for screening drug against HIV viral entry, classified in class 435, subclass 4.  |
| Group IV   | Claims 11-13, drawn to a kit, classified in class 435, subclass 975.   |
| Group V    | Claims 14-18, drawn to a method for preventing and/or treating HIV infection, classified in class 424, subclass 9.32   |
| Group VI   | Claims 19-21, drawn to a pharmaceutical composition comprising CC-CKR5, classified in class 530, subclass 300.   |
| Group VII  | Claims 22-26, and 38, drawn to a non-human transgenic animal, classified in class 800, subclass 350.   |
| Group VIII | Claims 33, drawn to a cell transfected with CD4 and a mimic of the translocation promoter, classified in 435, subclass 325.                                  |
| Group IX   | Claims 34-36, drawn to an antisense nucleic acid against an mRNA of CCR5 and a transfected cell line, classified in class 536, subclass 24.5.                |
| Group X    | Claims 37 and 70, drawn to an assay for selecting a therapeutic agent, classified in class 435, subclass 2.  |
| Group XI   | Claims 39-40, drawn to a method of filtering a biological fluid to remove a virus pseudotyped, classified in class 435, subclass 174.                        |
| Group XII  | Claims 71-73, drawn to an antibody that specific for an epitope of CCR5, classified in class 424, subclass 141.1.  |

Responsive to the Requirement for restriction, Applicants elect to prosecute the invention of Group X, claims 37 and 70, drawn to an assay for selecting a therapeutic agent, with traverse.

Applicants respectfully request reconsideration of the Requirement for Restriction, or in the alternative, modification of the Restriction Requirement to allow prosecution of more than one group of claims designated by the Examiner in the present Application, for the reasons provided as follows.

Under 35 U.S.C. §121 "two or more independent and distinct inventions ... in one Application may ... be restricted to one of the inventions." Inventions are "'independent'" if "there is no disclosed relationship between the two or more subjects disclosed" (MPEP 802.01). The term "'distinct'" means that "two or more subjects as disclosed are related ... but are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE OVER EACH OTHER" (MPEP 802.01) (emphasis in original). However, even with patentably distinct inventions, restriction is not required unless one of the following reasons appear (MPEP 808.02):

1. Separate classification
2. Separate status in the art; or
3. Different field of search.

Further, under Patent Office Examining Procedures, "[i]f the Search and Examination of an entire Application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions" (MPEP 803, Rev. 8, May 1988) (emphasis added).

Applicants respectfully submit that the groups designated by the Examiner fail to define compositions and methods, with properties so distinct as to warrant separate Examination and Search. Claims 37 and 70, of elected Group X, which are drawn to an assay for selecting a therapeutic agent are fundamentally related to claims 1-6 of Group I, drawn to a method for identifying a presence of a translocation promoting agent. In addition, claims 7-9 of Group II, drawn to a method for identifying viral envelope glycoprotein binding to a translocating promoter agent are also fundamentally related to the elected claims of Group X. In addition, the claim of Group III (claim 10) and the

claims of Group V (claims 14-18) are also fundamentally related to the claims of elected Group X. In particular, the claims of these groups are drawn to an assay for screening drugs against HIV viral entry and a method for preventing and/or treating HIV infection, respectively. The commonality of the claims of Groups I, II, III and V with those of elected Group X lies in the fact that the methods of the claims in these 5 groups all relate to the mechanism by which HIV entry/translocation into the host cell is enhanced by the presence of a translocation promoting agent in the cell. In particular, the use of such a translocation promoting agent, such as CC-CKR5, is a key component by which viral entry is achieved, thus resulting in a disease or cellular debilitation caused by the virus, such as the virus that causes AIDS. Applicants assert that the search for any of the methods separately classified by the Examiner as the invention of elected Group X would require an additional search of the **identical** classes wherein the claims of Groups I, II, III and V are classified, thus resulting in a duplicate search for the same material. Thus, Applicants submit that the Search and Examination of the entire Application, or, at least, of Groups I, II, III and V with elected Group X can be made without serious burden, and therefore the Examiner should examine all of the claims of the Application on the merits.

The Examiner's assertions to the contrary notwithstanding, Applicants respectfully submit that conjoint examination and inclusion of all of the claims of the present Application would not present an undue burden on the Examiner, and accordingly, withdrawal of the Requirement for Restriction, or, at the least, modification to include the claims of Groups I, II, III and V with the claims of elected Group X is in order.

#### ***Fees***

No additional fees are believed to be necessitated by the foregoing Response. However, should this be erroneous, authorization is hereby given to charge Deposit Account No. 11-1153 for any underpayment, or credit any overages.

***Conclusions***

In view of the above, withdrawal of the Requirement for the Restriction is requested, and an early action on the merits of the claims is courteously solicited.

Respectfully submitted,

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